United States Department of Labor
Employees' Compensation Appeals Board

RANDALL D. WRIGHT, Appellant	)	
	)	**Docket No. 03-1716**
and	)	**Issued: December 8, 2003**
PEACE CORPS, Washington, DC, Employer	)	

Randall D. Wright, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member

JURISDICTION

On June 24, 2003 appellant filed a timely appeal of the June 25, 2002 decision of the Office of Workers' Compensation Programs, which granted appellant a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of appellant's June 25, 2002 schedule award.[1]

[1] By letter dated May 23, 2003, the Office advised appellant of the option to receive his schedule award in a lump-sum payment in accordance with 5 U.S.C. § 8135(a) and 20 C.F.R. § 10.422(b). The Office stated that as of June 15, 2003 the lump-sum payment would be $215,560.93. Appellant subsequently inquired about the Office's method of calculating the lump-sum payment. The Office, however, was unable to explain the applicable formula to appellant's satisfaction. On appeal, appellant requested that the Board recalculate the amount of any lump-sum payment. The issue of whether the Office applied the appropriate formula in calculating the amount of appellant's lump-sum payment is not properly before the Board. The record on appeal does not indicate that appellant either elected to receive a lump-sum payment or that the Office issued a final determination regarding the amount of any lump-sum payment requested. Absent a final determination by the Office, this issue cannot currently be addressed by the Board. 20 C.F.R. § 501.2(c).

ISSUE

The issue is whether appellant has more than an 80 percent permanent impairment of the left and right upper extremities, for which he received a schedule award.

FACTUAL HISTORY

On January 6, 1991 appellant, then a 22-year-old agricultural instructor, sustained a cervical fracture while in the performance of duty. Appellant was rendered a quadriplegic as a result of his January 6, 1991 cervical fracture at C6. The Office accepted the claim for quadriplegia, neurogenic bladder, neurogenic bowel, spasticity, scoliosis of the cervical-thoracic region, cervical lordosis, cervical kyphosis and anterior and posterior cervical fusions.

On June 25, 2002 the Office granted appellant a schedule award for a 100 percent impairment of both lower extremities and an 80 percent impairment of both upper extremities. The award covered a period of 1075.2 weeks, beginning April 9, 2002 and continuing through November 16, 2022. The Office based its award on the April 10, 2002 report provided by Dr. Thomas D. Schmitz, a Board-certified orthopedic surgeon and Office referral physician.[2] An Office medical consultant reviewed the relevant medical evidence of record, including Dr. Schmitz's findings, and in a report dated May 9, 2002, determined that appellant had a 100 percent impairment of both lower extremities as a result of C6 quadriplegia. He also found that appellant had an 80 percent impairment of his left and right upper extremities.

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.[3] The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The implementing regulations have adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the appropriate standard for evaluating schedule losses.[4] Effective February 1, 2001, schedule awards are determined in accordance with the A.M.A., *Guides* (5th ed. 2001).[5]

[2] Dr. Schmitz did not provide a specific impairment rating.

[3] The Act provides that, for a total, or 100 percent loss of use of an arm, an employee shall receive 312 weeks of compensation. 5 U.S.C. § 8107(c)(1). With respect to the loss of use of one's lower extremity, pursuant to 5 U.S.C. § 8107(c)(2), an employee shall receive 288 weeks of compensation for a total, or 100 percent loss of use of a leg.

[4] 20 C.F.R. § 10.404 (1999).

[5] FECA Bulletin No. 01-05 (issued January 29, 2001); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 (June 2003).

ANALYSIS

As Dr. Schmitz's April 10, 2002 report did not include an impairment rating under the A.M.A., *Guides* (5th ed. 2001), the Office properly referred the case record for review by its medical consultant. Based on Dr. Schmitz's examination findings, the Office medical consultant diagnosed C6 quadriplegia. He also determined that appellant had 100 percent impairment of both lower extremities as a result of the C6 quadriplegia.[6] With respect to appellant's upper extremities, the Office medical consultant determined that appellant had Grade 4 muscle strength of the C6 nerve root, resulting in 11 percent impairment for weakness of his bilateral C6 nerve root.[7] The Office medical consultant rated appellant's pain and sensory deficit at the C6 nerve root as Grade 2, which represented an 80 percent impairment under Table 16-10 at page 482 of the A.M.A., *Guides* (5th ed. 2001). This 80 percent figure when multiplied by the 8 percent maximum impairment at C6 under Table 16-13 represents 6 percent impairment, bilaterally.[8] However, the Office medical consultant only identified five percent impairment for residual impaired sensation at the C6 level. Regarding appellant's impairment at C7, C8 and T1 nerve roots, the Office medical consultant found that appellant had 100 percent (Grade 0) sensory and motor deficits at each level in accordance with Tables 16-10 and 16-11 at pages 482 and 484 of the A.M.A., *Guides* (5th ed. 2001). According to Table 16-13 at page 489 of the A.M.A., *Guides* (5th ed. 2001), appellant's 100 percent combined motor/sensory deficits at C7, C8 and T1 represented bilateral upper extremity impairments of 38, 48 and 24 percent, respectively.

Utilizing the Combined Values Chart at page 604 of the A.M.A., *Guides* (5th ed. 2001), the Office medical consultant determined that appellant had a combined upper extremity impairment of 80 percent, bilaterally.[9] Inasmuch as the Office medical consultant's calculation of appellant's impairments substantially conforms to the A.M.A., *Guides* (5th ed. 2001), his finding constitutes the weight of the medical evidence.[10] Accordingly, appellant has failed to provide any probative medical evidence that he has greater than an 80 percent impairment of the left and right upper extremities.[11]

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[6] Appellant did not challenge the Office's determination regarding his 100 percent lower extremity impairments.

[7] Under Tables 16-11 and 16-13, at pages 484 and 489 of the A.M.A., *Guides* (5th ed. 2001), a Grade 4 rating (25 percent) and a C6 motor deficit (35 percent) results in 9 percent impairment (25 percent x 35 percent = 8.75 percent).

[8] A.M.A., *Guides* 489 (5th ed. 2001).

[9] Although the Office medical consultant miscalculated appellant's motor/sensory/pain impairments at the C6 nerve root level, this error ultimately benefited appellant. Had the proper figures of 9 percent and 6 percent been utilized, this would have resulted in a combined upper extremity impairment of 79 percent, bilaterally.

[10] *See Bobby L. Jackson*, 40 ECAB 593, 601 (1989).

[11] Appellant received a total of 1075.2 weeks of compensation for impairments to his arms and legs. Appellant has an 80 percent impairment of each upper extremity, which entitled him to a combined 499.2 weeks of compensation. 5 U.S.C. § 8107(c)(1). Additionally, because appellant lost the total use of both legs, he received 576 weeks compensation for his combined lower extremity impairments. 5 U.S.C. § 8107(c)(2). Therefore, the Office properly awarded appellant 1075.2 weeks compensation for the impairments involving his upper and lower extremities.

CONCLUSION

The Board finds that appellant failed to establish that he has more than an 80 percent permanent impairment of each of the upper extremities.

ORDER

IT IS HEREBY ORDERED THAT the June 25, 2002 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 8, 2003
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member